MAGNA BAY SDN BHD & ANOR v. BAHILI MOHD YAMAN & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
ABANG ISKANDAR JCA
BADARIAH SAHAMID JCA
HARMINDAR SINGH DHALIWAL JCA
[CIVIL APPEALS NO: B-02(NCVC)(W)-1155-06-2016 &
B-02(NCVC)(W)-1168-06-2016]
25 JULY 2017

SUCCESSION: *Trustees – Claim by beneficiaries – Trustee held lands on trust for original owner – Trustee's beneficiaries claiming for lands upon death of trustee – Locus standi to commence proceedings – Whether land reverted to estate of original owner upon death of trustee – Whether consent of beneficiaries of trustee required for transfer of lands – Whether beneficiaries of trustee have locus standi to commence proceedings*

CIVIL PROCEDURE: *Jurisdiction – High Court – Setting aside final order regularly obtained from another High Court of concurrent jurisdiction – Whether final order must be proven to be null and void on ground of illegality or lack of jurisdiction – Whether deliberate fraud proven*

The disputes herein emanated from an issue of succession rights over two plots of land ('the lands'). The respondents ('the plaintiffs') were the children of the deceased, Mohamed Yaman Khatib Ikey ('Mohamed Yaman'), who brought the action on behalf of all the beneficiaries of the estate of Mohamed Yaman including themselves. The plaintiffs alleged that the transfer of the lands to the appellant in Appeal No 1168 ('the first defendant') and second defendant were null and void *ab initio* and was obtained by fraud and that there was conspiracy to cause the subsequent transfers to the appellants in Appeal No 1155 ('the third and fourth defendants'). The first and second defendants, in resisting the claim of fraud, contended, *inter alia*, that: (i) Mohamed Yaman held the lands in trust for one Jangkau Jangkar and was never the proprietor of the lands; (ii) Jangkau Jangkar was related to the first and second defendants; and (iii) the plaintiffs had failed to provide any evidence to show the existence of a sale and purchase transaction of the lands between Mohamed Yaman and Jangkau Jangkar. The third and fourth appellants contended the lands were appropriately transferred to them and produced the High Court order dated 12 January 2006 ('2006 order') confirming that the lands were owned by the first and second defendants. The third and fourth defendants contended that they were *bona fide* purchasers for valuable consideration. At the outset, the *locus standi* of the plaintiffs to commence the action were challenged. The trial judge held that the plaintiffs

had the *locus standi* to commence proceedings as they did not seek rights to the lands in question but sought an order for the said lands to be returned to the estate of Mohamed Yaman. On the effect of the 2006 order, the court found that the order was obtained illegally, through *mala fide* and fraud. The trial judge held that as the transfer of the said lands to the first and second defendants was not valid and against the law, the third and fourth defendants were not *bona fide* purchasers and hence, were not entitled to the protection afforded by s. 340 of the National Land Code. In the instant appeal, the judgment of the trial judge was assailed on only one ground; the issue of the plaintiffs' *locus standi* to commence the action. It was contended by the appellants that Mohamed Yaman held the said lands on trust and there was no evidence that Mohamed Yaman had purchased the said lands from Jangkau Jangkar, the original owner. As such, upon the death of the trustee, Mohamad Yaman, the trust property could not be vested on to the estate of the deceased trustee and therefore, the plaintiffs had no *locus* to bring this action.

Held (allowing both appeals; setting aside orders of High Court with costs here and below)
Per Harmindar Singh Dhaliwal JCA delivering the judgment of the court:

(1) The plaintiffs' rights could only arise from being the beneficiaries of the estate of Mohamed Yaman as no evidence of any letter of administration granted to the plaintiffs was ever adduced in the trial proceedings. It must follow that the plaintiffs were suing in their own capacity as beneficiaries. It is trite law that a beneficiary under intestacy has no interest or propriety in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate. Nevertheless, a beneficiary may still have a legal remedy to recover the assets of the estate provided special circumstances are shown to exist. (paras 13 & 14)

(2) The record on the title clearly reflected that Mohamed Yaman held the said lands as trustee. There was no evidence of sale between Jangkau Jangkar and Mohamed Yaman. The irresistible inference was that there was no such sale of the land as asserted by the plaintiffs. The trust document established beyond doubt that the transfer to Mohamed Yaman was as trustee. Further, the assertion that the trust was for the benefit of the plaintiffs could not be right as the plaintiffs were not born when the trust document was executed in 1950. The plaintiffs also never claimed that they were the descendants of Jangkau Jangkar. Therefore, it was more likely that Mohamed Yaman was holding the said lands on trust for Jangkau Jangkar and her descendants. Hence, the trial judge erred in concluding that the consent of the beneficiaries of the estate of Mohamad Yaman was required before the lands could be transferred to

A the first and second defendants. Even if there was any fraud in the transfer of the lands, the property should revert to the estate of Jangkau Jangkar and not to the estate of Mohamed Yaman. (paras 17 & 18)

(3) It is settled law that one High Court could not lightly set aside a final order regularly obtained from another High Court of concurrent B jurisdiction, except where the final judgment of the High Court can be proved to be null and void on the ground of illegality or lack of jurisdiction. A judgment may also be impeached for deliberate fraud practised upon the court although it would be insufficient to show that a litigant merely convinced the court through misleading or erroneous C evidence. Apart from the order itself, there were no other documents produced before the trial court in its finding of fraud in relation to the 2006 order. The judge who heard the case which resulted in the 2006 order would have granted the order based on the information gathered from the affidavits filed. However, those affidavits were not produced D at the trial below, and therefore, it became a matter of pure speculation as to how the first and second defendants had defrauded the court. (paras 19 & 20)

(4) In the circumstances, the plaintiffs had no *locus standi* to commence the proceedings and obtain the orders granted by the High Court as they E were not beneficiaries of the estate of Jangkau Jangkar. Being beneficiaries of the estate of Mohamed Yaman was of no consequence. (paras 19, 20 & 21)

Bahasa Malaysia *Headnotes*

F Pertikaian dalam rayuan ini bermula daripada isu hak pewarisan atas dua bidang tanah ('tanah-tanah'). Responden-responden ('plaintif-plaintif') adalah anak-anak si mati, Mohamed Yaman Khatib Ikey ('Mohamed Yaman'), yang memulakan tindakan bagi pihak kesemua benefisiari harta pusaka Mohamed Yaman termasuk diri mereka sendiri. Plaintif-plaintif mendakwa bahawa pindah milik tanah-tanah kepada perayu dalam Rayuan No. 1168 ('defendan G pertama') dan defendan kedua tidak sah dan terbatal *ab initio* dan diperoleh secara penipuan dan terdapat persubahatan untuk membolehkan pindah milik tersebut kepada perayu-perayu dalam Rayuan No 1155 ('defendan ketiga dan keempat'). Defendan pertama dan kedua, dalam menentang dakwaan penipuan, menghujahkan, antara lain, bahawa: (i) Mohamed Yaman H memegang tanah-tanah itu sebagai amanah buat seorang bernama Jangkau Jangkar dan tidak pernah menjadi pemilik tanah-tanah tersebut; (ii) Jangkau Jangkar mempunyai hubungan persaudaraan dengan defendan pertama dan kedua; dan (iii) plaintif-plaintif gagal mengemukakan keterangan untuk menunjukkan kewujudan transaksi jual beli tanah-tanah itu antara Mohamed

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Yaman dan Jangkau Jangkar. Perayu ketiga dan keempat menghujahkan bahawa tanah-tanah tersebut telah dipindah milik dengan sewajarnya kepada mereka dan mengemukakan perintah Mahkamah Tinggi bertarikh 12 Januari 2006 ('perintah 2006') yang mengesahkan bahawa tanah-tanah itu dimiliki defendan pertama dan kedua. Defendan ketiga dan keempat menghujahkan bahawa mereka adalah pembeli *bona fide* bagi balasan bernilai. Di awal perbicaraan, *locus standi* plaintif-plaintif untuk memulakan tindakan dicabar. Hakim bicara memutuskan bahawa plaintif-plaintif mempunyai *locus standi* untuk memulakan tindakan kerana mereka bukan memohon hak atas tanah-tanah yang dipersoalkan tetapi memohon perintah supaya tanah-tanah itu dikembalikan kepada harta pusaka Mohamed Yaman. Berkenaan kesan perintah 2006, mahkamah mendapati perintah tersebut diperoleh secara tidak sah, melalui *mala fide* dan penipuan. Hakim bicara memutuskan bahawa pindah milik tanah-tanah itu kepada defendan pertama dan kedua tidak sah dan bertentangan dengan undang-undang, defendan ketiga dan keempat bukan pembeli *bona fide* dan oleh itu mereka tidak berhak mendapat perlindungan bawah s. 340 Kanun Tanah Negara. Dalam rayuan ini, penghakiman mahkamah bicara ditentang atas satu alasan sahaja; isu *locus standi* plaintif-plaintif untuk memulakan tindakan. Perayu-perayu menghujahkan bahawa Mohamed Yaman memegang tanah-tanah tersebut atas amanah dan tiada keterangan menunjukkan Mohamed Yaman telah membeli tanah-tanah itu daripada Jangkau Jangkar, pemilik asal. Oleh itu, selepas kematian pemegang amanah, Mohamed Yaman, harta amanah tidak boleh diletak hak dalam harta pusaka pemegang amanah yang meninggal dunia, dan dengan itu, plaintif-plaintif tiada *locus* memulakan tindakan ini.

Diputuskan (membenarkan kedua-dua rayuan; mengetepikan perintah Mahkamah Tinggi dengan kos di mahkamah ini dan mahkamah di bawah)

Oleh Harmindar Singh Dhaliwal HMR menyampaikan penghakiman mahkamah:

(1) Hak plaintif-plaintif hanya boleh timbul jika mereka benefisiari harta pusaka Mohamed Yaman kerana tiada surat pentadbiran diberi kepada plaintif-plaintif yang dikemukakan dalam prosiding perbicaraan. Oleh itu, plaintif-plaintif menyaman dalam kapasiti mereka sendiri sebagai benefisiari. Undang-undang adalah matan bahawa seorang benefisiari bawah kematian tidak berwasiat tidak mempunyai kepentingan atau hak milik atas harta pusaka persendirian si mati sehingga pentadbiran harta pusaka diselesaikan dan pembahagian dibuat menurut undang-undang pembahagian harta pusaka tidak berwasiat. Walau bagaimanapun, seorang benefisiari masih boleh mempunyai remedi dari segi undang-undang untuk mendapatkan semula aset-aset harta pusaka jika hal keadaan istimewa ditunjukkan.

(2) Rekod dalam hak milik jelas menunjukkan Mohamed Yaman memegang tanah-tanah sebagai pemegang amanah. Tiada keterangan jualan antara Jangkau Jangkar dan Mohamed Yaman. Inferens tidak boleh sangkal adalah bahawa tiada jualan tanah seperti yang dinyatakan oleh plaintif-plaintif. Dokumen amanah membuktikan melampaui keraguan bahawa pindah milik kepada Mohamed Yaman adalah sebagai pemegang amanah. Selanjutnya, pernyataan bahawa amanah tersebut adalah bagi manfaat plaintif-plaintif tidak mungkin benar kerana plaintif-plaintif belum lagi lahir semasa dokumen amanah dimeterai pada 1950. Plaintif-plaintif juga tidak pernah mendakwa bahawa mereka adalah keturunan Jangkau Jangkar. Oleh itu, lebih berkemungkinan bahawa Mohamed Yaman memegang tanah-tanah itu sebagai amanah bagi Jangkau Jangkar dan keturunannya. Dengan itu, hakim bicara terkhilaf apabila memutuskan bahawa persetujuan benefisiari-benefisiari harta pusaka Mohamed Yaman diperlukan sebelum tanah-tanah tersebut dipindah milik kepada defendan pertama dan kedua. Walaupun terdapat penipuan dalam pindah milik tanah-tanah itu, hartanah itu sepatutnya dikembalikan kepada harta pusaka Jangkau Jangkar dan bukan kepada harta pusaka Mohamed Yaman.

(3) Undang-undang matan adalah Mahkamah Tinggi tidak boleh sewenang-wenangnya mengetepikan perintah muktamad yang diperoleh sewajarnya daripada satu lagi Mahkamah Tinggi yang berbidang kuasa setara, kecuali jika keputusan muktamad Mahkamah Tinggi itu boleh dibuktikan tidak sah dan batal atas alasan ketaksahan atau tiada bidang kuasa. Satu-satu penghakiman boleh juga dipersoalkan jika penipuan dilakukan dengan sengaja terhadap mahkamah walaupun ini tidak mencukupi untuk menunjukkan bahawa seorang litigan meyakinkan mahkamah semata-mata melalui keterangan yang mengelirukan atau salah. Selain perintah itu sendiri, tiada dokumen lain yang dikemukakan di mahkamah bicara untuk membuat dapatan penipuan berkaitan perintah 2006. Hakim yang membicarakan kes yang mengeluarkan perintah 2006 kemungkinan memberikan perintah tersebut berdasarkan maklumat yang dikumpul daripada afidavit-afidavit yang difailkan. Walau bagaimanapun, afidavit-afidavit itu tidak dikemukakan semasa perbicaraan di Mahkamah Tinggi, dan dengan itu, perkara tentang bagaimana defendan pertama dan kedua telah melakukan penipuan terhadap mahkamah adalah spekulasi semata-mata.

(4) Dalam hal keadaan tersebut, plaintif-plaintif tiada *locus standi* memulakan prosiding dan memperoleh perintah-perintah yang diberikan oleh Mahkamah Tinggi kerana mereka bukan benefisiari harta pusaka Jangkau Jangkar. Menjadi benefisiari harta pusaka Mohamed Yaman tidak membawa apa-apa kesan.

Case(s) referred to:
Al Rashidy Kassim & Ors v. Rosman Roslan [2007] 3 CLJ 361 FC ***(refd)***
Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd [2001] 2 CLJ 321 CA ***(refd)***
Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(refd)***
Joseph Hayim Hayim and Another v. Citibank NA and Another [1987] AC 730 ***(refd)***
Lee Phek Choo v. Ang Guan Yau & Anor [1975] 1 LNS 83 FC ***(refd)***
Ooi Jim & Anor v. Ai Eit & Ors [1974] 1 LNS 108 FC ***(refd)***
Satish Chandra v. Satish Kantha Roy [1923] PC 73 ***(refd)***
Subramaniam NS Dhurai v. Sandrakasan Retnasamy & Ors [2005] 3 CLJ 539 CA ***(refd)***
Wong Moy (Administratix of the Estate of Theng Chee Khim, (deceased) v. Soo Ah Choy [1996] 3 SLR 398 ***(refd)***

Legislation referred to:
National Land Code, s. 340

(Civil Appeal No: B-02(NCVC)(W)-1155-06-2016)
For the appellants - Ashmadi Othman; M/s Zulpadli & Edham
For the respondents - Lee Hong Yap; M/s HY Lee & Co

(Civil Appeal No: B-02(NCVC)(W)-1168-06-2016)
For the appellant - Azhar Arman Ali; M/s Arman-Yunos
For the respondents - Lee Hong Yap; M/s HY Lee & Co

[Editor's note: For the High Court judgment, please see Bahili Mohamed Yaman & Satu Lagi lwn. Jasni Ismail & Yang Lain [2016] 1 LNS 1753 (overruled).]

Reported by S Barathi

JUDGMENT

Harmindar Singh Dhaliwal JCA:

[1] There are two appeals before us. They emanate from the decision of the High Court at Shah Alam delivered on 18 May 2016 after a full trial. The dispute concerned succession rights over two plots of land. The High Court had allowed the respondents' claim and essentially granted all the declarations sought in relation to the lands held under titles GM 2298 and GM 3591 ("the said lands") including declaring as null and void various transactions involving the said lands.

[2] The appeals, which were earlier ordered to be heard together, came up for hearing on 4 April 2017. After hearing the parties and taking into consideration the written submissions, we allowed the appeal and set aside the orders of the High Court. Our reasons for doing so now follow and will constitute the judgment of the court. For convenience, the parties will be referred to as they were in the High Court.

Salient Facts

[3] The salient facts giving rise to the civil suit were summarised by the learned trial judge as follows:

> 1. Plaintif-Plaintif merupakan anak kepada Mohamed Yaman Bin Khatib Ikey (si mati) untuk 5/6 bahagian tak bahagi di atas sekeping tanah di bawah suratan hakmilik GM 2298 lot 3322 Mukim Hulu Langat Daerah Hulu Langat Negeri Selangor. Si mati juga adalah tuan punya untuk 55/480 bahagian tak bahagi di atas keping tanah di bawah suratan hakmilik GM 5391 *(sic)* lot 3332 Mukim Hulu Langat Daerah Hulu Langat Negeri Selangor.
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> 2. Pada atau sekitar tahun 2014, Plaintif-Plaintif telah membuat pertanyaan di Pejabat Tanah Dan Galian Hulu Langat ke atas hartanah GM 2298 dan GM 5391 *(sic)*, tetapi telah diberitahu oleh pegawai yang bertugas bahawa mengikut rekod Pejabat Tanah Dan Galian Negeri Selangor pemilik daftar bagi hartanah GM 2298 tersebut adalah Defendan Ketiga dan pemilik berdaftar bagi GM 5391 *(sic)* adalah Defendan Keempat.
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> 3. Plaintif-plaintif dalam tuntutannya menyatakan bahawa transaksi pindahmilik GM 2298 dan GM 3591 daripada Si Mati kepada Defendan Pertama dan Defendan Kedua adalah tidak sah, batal, "null & void *ab initio*", dan merupakan fraud penipuan yang butir-butir penuh adalah dalam pengetahuan Defendan-Defendan.
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> 4. Plaintif-plaintif juga menyatakan bahawa Defendan-Defendan telah bersubahat/ bersesama melakukan penipuan dengan menyebabkan dan atau memindah hakmilik hartanah GM 2298 dan GM 3591 kepada Defendan Pertama dan Defendan Kedua terlebih dahulu dan kemudiannya hartanah GM 2298 dipindahmilik kepada Defendan Ketiga dan hartanah GM 3591 dipindahmilik kepada Defendan Keempat.

[4] Now, this claim of fraud by the plaintiffs was resisted by the first and second defendants. The evidence adduced by them was summarised by the learned judge in the judgment as follows:

> 5. Defendan Pertama dan Defendan Kedua menyatakan di dalam surat hakmilik hartanah GM 2298 dan GM 3591 tersebut jelas dicatitkan nama Mohamed Yaman Bin Khatib Ikey (Si Mati) adalah semata-mata sebagai pemegang amanah (As Trustee) bagi pihak Jangkau Binti Jankar dan bukannya sebagai pemilik hartanah-hartanah tersebut.
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> 6. Jangkau Binti Jankar mempunyai pertalian darah dengan Defendan Pertama dan Defendan Kedua kerana beliau adalah moyang kepada Defendan Pertama dan Defendan Kedua. Manakala Plaintif-plaintif tidak mempunyai hubungan pertalian darah dengan Jangkau Binti Jankar.

7. Segala cukai hartanah-hartanah tersebut selama ini dibayar oleh ahli keluarga Defendan Pertama dan Defendan Kedua. Plaintif-Plaintif tidak pernah mengambil peduli akan hartanah-hartanah tersebut dan juga tidak pernah menjelaskan bayaran cukai tanah hartanah-hartanah tersebut.

8. Plaintif-Plaintif juga telah gagal untuk mengemukakan sebarang bukti sekiranya wujud apa-apa transaksi jual-beli antara Jangkau Binti Jankar dengan Mohamed Yaman Bin Khatib Ikey untuk menyokong dakwaan Plaintif Kedua bahawa hartanah-hartanah tersebut telah dibeli oleh arwah bapa mereka.

9. Defendan Pertama telah dimaklumkan oleh ahli keluarganya bahawa Mohamed Yaman Bin Khatib Ikey telah dilantik oleh Jangkau Binti Jankar sebagai pemegang amanah hartanah-hartanah tersebut kerana Mohamed Yaman Bin Khatib Ikey sememangnya seorang yang dihormati dan menjadi kepercayaan penduduk-penduduk kampung untuk memegang hartanah-hartanah di kampung sebagai pemegang amanah.

10. Defendan Pertama mengakui beliau bersama Zubir Bin Zarif ada bertemu Plaintif Pertama. Tujuan beliau menemui Plaintif Pertama untuk memohon Plaintif Pertama menandatangani satu surat pengesahan yang menyatakan bahawa Plaintif Pertama tidak mempunyai apa-apa kepentingan di dalam hartanah-hartanah milik moyangnya tetapi Plaintif Pertama enggan menandatangani surat pengesahan tersebut atas alasan beliau tidak mempunyai kaitan dengan hartanah GM 2298 dan GM 3591.

11. Melalui perintah Mahkamah Tinggi Shah Alam no. MT1-21-165/2005, nama beliau dan Salmah Binti Ismail (Defendan Kedua) telah dimasukkan sebagai pemilik berdaftar hartanah GM 3591 dan GM 2298 bagi bahagian Mohamad Yaman bin Khatib Ikey (si mati). Oleh kerana transaksi-transaksi tersebut telah melebihi 10 tahun dan ianya telah diuruskan oleh peguam sebelum itu, dokumen-dokumen transaksi tersebut tidak dapat dikemukakan. Defendan Pertama juga menyatakan bahawa peguamnya mendapat makluman daripada Mahkamah Shah Alam bahawa dokumen-dokumen dalam kes MT1-21-165/2005 masih tidak ditemui sehingga sekarang dan berkemungkinan rekod bagi kes tersebut telah dipindahkan ke tempat lain.

12. Defendan Pertama dan Defendan Kedua menyatakan tuntutan-tuntutan Plaintif-Plaintif terhadap mereka adalah defektif kerana Plaintif-Plaintif sememangnya tidak mempunyai hak/kepentingan ke atas hartanah GM 2298 dan GM 3591 kerana Mohamed Yaman Bin Khatib Ikey adalah semata-mata pemegang amanah ke atas bahagian tanah-tanah tersebut. Plaintif-Plaintif juga bukan waris kepada Jangkau Bin Jankar.

13. Defendan Pertama dan Kedua menegaskan bahawa pindahmilik hartanah GM 2298 dan GM 3591 bahagian Mohamad Yaman bin Khatib Ikey (si mati) kepada mereka adalah teratur dan sah. Mereka juga menyatakan bahawa pindahmilik hartanah-hartanah tersebut di antara pihak Defendan Pertama, Defendan Ketiga dan Defendan Keempat adalah dibuat secara betul, sah dan teratur di mana tiada apa-apa fraud, dan penipuan telah berlaku.

14. Di samping itu, Plaintif-Plaintif juga tidak mempunyai *locus standi* atau kausa tindakan yang sah.

[5] Not surprisingly, the third and fourth defendants, to whom the said lands were subsequently transferred, also provided evidence which was summarised by the learned judge as follows:

15. Hamzah Bin Abdul Majid (Defendan Keempat) adalah pemilik berdaftar hartanah GM 2298 manakala Defendan Ketiga adalah sebuah Syarikat Sendirian Berhad, pemilik pendaftar hartanah GM 3951. Defendan Keempat dan Defendan Ketiga telah membeli hartanah-hartanah daripada Defendan Pertama dan Defendan Kedua melalui kenalannya iaitu Mohammad Razi Bin Mahmud yang merupakan kenalan rapat Defendan Pertama. Defendan Ketiga dan Defendan Keempat telah bersetuju untuk membeli hartanah- hartanah tersebut dengan harga RM 45,000.00 masing-masing. Hasil carian, didapati bahawa Defendan Pertama dan Defendan Kedua adalah pemilik kepada hartanah-hartanah tersebut. Defendan Keempat menyatakan borang carian tersebut tidak dapat dikemukakan kepada Mahkamah kerana telah hilang daripada simpanannya berikutan transaksi ini berlaku 10 tahun yang lalu. Defendan Keempat menyatakan cuma beberapa dokumen sahaja yang dapat dijumpai iaitu sesalinan perintah Mahkamah Tinggi Shah Alam yang bertarikh 12 Januari 2006 yang mengesahkan bahawa tanah-tanah tersebut adalah sememangnya milik Defendan Pertama dan Defendan Kedua. Mengikut semakannya, tiada apa-apa tindakan yang dimasukkan oleh Plaintif-Plaintif bagi mengenepikan perintah tersebut.

16. Pada 14 April 2006, Defendan Pertama dan Defendan Kedua telah memindahmilik hartanah GM 3591 kepada Defendan Keempat dan menerima balasan sebanyak RM45,000.00 daripada transaksi tersebut. Defendan Pertama dan Defendan Kedua juga pada 19 April 2006 telah memindahmilik hartanah GM 2298 kepada Defendan Ketiga dan juga menerima balasan sebanyak RM45,000.00 daripada transaksi tersebut.

17. Selama 10 tahun tanah-tanah tersebut dipindahmilik kepada Defendan Ketiga dan Keempat, mereka tidak pernah dihubungi oleh Plaintif-Plaintif.

18. Defendan Ketiga dan Keempat menyatakan mereka adalah pembeli *bona fide* yang sah. Mereka juga telah membayar balasan kepada Defendan Pertama dan Defendan Kedua seperti yang dipersetujui oleh pihak-pihak.

Decision Of The High Court

[6] At the end of the trial, several issues were raised by the parties. At the outset, the *locus standi* of the plaintiffs to commence the action in the High Court was challenged. To recap, the plaintiffs were the children of the deceased, Mohamed Yaman bin Khatib Ikey ("Mohamed Yaman"). It appeared that they had brought the action on behalf of all the beneficiaries of the estate of Mohamed Yaman including themselves. On this issue of *locus standi*, and relying on the Federal Court decisions in *Ooi Jim & Anor v. Ai Eit & Ors* [1974] 1 LNS 108; [1977] 2 MLJ 105 and *Al Rashidy Kassim & Ors v. Rosman Roslan* [2007] 3 CLJ 361 ("Al Rashidy"), the learned judge held that the plaintiffs had the *locus standi* to commence proceedings as they were not seeking rights to the lands in question but only seeking an order for the said lands to be returned to the estate of their late father, Mohamed Yaman.

[7] On the next question of the effect of the court order of 12 January 2006 ("the 2006 Order"), the court found that the said order was obtained illegally, through *mala fide* and fraud. The reasons given for this finding by the learned judge appear in para. 44 of the judgment as follows:

44. … Pertama, saya menerima keterangan Plaintif-Plaintif bahawa mereka tidak menerima Saman Pemula, afidavit dan perintah tersebut. Kedua, Defendan Pertama dan Defendan Kedua tidak pernah menyerahkan Saman Pemula, afidavit dan perintah tersebut kepada waris-waris si mati. Ketiga, waris-waris si mati tidak dijadikan pihak di dalam Saman Pemula tersebut. Keeempat, waris-waris si mati tidak hadir dan juga tidak memberikan surat kebenaran membenarkan bahagian si mati dipindah kepada Defendan Pertama dan Defendan Kedua. Kelima, Defendan Pertama sendiri mengakui pihak Defendan Keempat adalah orang yang merancang, mengatur dan menguruskan segala pelantikan peguamcara bagi memohon Saman Pemula tersebut untuk membolehkan bahagian hartanah si mati dipindahmilik kepada Defendan Pertama dan Defendan Kedua.

[8] Based on these findings, the learned judge then held that the transfer of the said lands to the first and second defendants was not valid and against the law. The learned judge also expressed the view that this was sufficient to allow the plaintiffs' claim.

[9] Dealing next with the transfer of the said lands to the third and fourth defendants by the first and second defendants, and relying on the authority of *Subramaniam NS Dhurai v. Sandrakasan Retnasamy & Ors* [2005] 3 CLJ 539; [2005] 6 MLJ 120, the learned judge held that the third and fourth defendants were not *bona fide* purchasers and hence not entitled to the protection afforded by s. 340 of the National Land Code.

[10] As a consequence of these findings, the learned judge made several orders which do not seem to appear in the grounds of judgment but appear in the court order extracted dated 18 May 2016. Essentially, the court declared that the transfers of the said lands, including the land held under GM2298 and the undivided share of 55/480 of the land held under GM3591, were null and void. It was also ordered that the said lands be transferred by the defendants to the estate of Mohamed Yaman. The 2006 Order was set aside on the grounds of being "null and void *ab initio*". Costs were also ordered to be paid by the defendants to the plaintiffs.

Our Decision

[11] In the instant appeal, the judgment of the learned trial judge was assailed on only one ground; the issue of *locus standi*. It was contended on behalf of the appellants that the deceased Mohamed Yaman, held the said lands on trust. There was no evidence that Mohamed Yaman had purchased the said lands from Jangkau binti Jangkar, the original owner. As such, upon the death of the trustee Mohamad Yaman, the trust property cannot be vested into the estate of the deceased trustee. It was submitted that the plaintiffs, therefore, have no *locus* to bring this action.

[12] In response, the respondents conceded that in 1948, one Sumin bin Tajeh (deceased) had transferred 55/480 undivided share in Lot 3332 to Jangkau binti Jangkar and 275/480 undivided share in the same Lot to Saeram binti Dike as trustee. Whilst Saeram binti Dike's share was later transferred to her descendants which eventually included the first and second defendants, the share belonging to Jangkau binti Jangkar was transferred to Mohamad Yaman as trustee in 1950 and had remained as such until the 2006 order. It was suggested that the first and second defendants could not have been the descendants of Jangkau binti Jangkar and the 2006 order was therefore obtained by fraud. It was even suggested that Mohamed Yaman held the lands as trustee for his children.

[13] With that being the position taken by the parties, we return to the question that confronts us in this appeal: whether the plaintiffs have any *locus standi* to commence this action. The plaintiffs' rights, as we understand it, could only arise from being the beneficiaries of the estate of Mohamed Yaman as no evidence of any letter of administration granted to the plaintiffs

was ever adduced in the trial proceedings. It must follow that the plaintiffs were suing in their own capacity as beneficiaries. The learned judge appreciated this state of affairs but His Lordship held that the plaintiffs had the *locus* to seek for the said lands to be returned to the estate of Mohamed Yaman.

[14] In this respect, it is trite law that a beneficiary under an intestacy has no interest or propriety in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate (*Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393; [1997] 3 MLJ 188 FC). Nevertheless, a beneficiary may still have a legal remedy to recover the assets of the estate provided special circumstances are shown to exist (*Wong Moy (Administratix of the Estate of Theng Chee Khim, (deceased) v. Soo Ah Choy* [1996] 3 SLR 398 followed by the Federal Court in *Al Rashidy, supra*; see also *Joseph Hayim Hayim and Another v. Citibank N.A. and Another* [1987] AC 730).

[15] In the instant case, we agree with the learned judge that in this context alone, the plaintiffs, assuming for a moment they are beneficiaries, had the *locus standi* to commence legal proceedings to protect and preserve the assets of the estate. Although no explanation was forwarded as to why no administrators had been appointed for the estate of Mohamed Yaman, we were of the view that the beneficiaries had the limited right to preserve the assets of the estate. We say limited as there was no right for any such assets recovered to be vested in them or even a right to damages as that claim could only be made by the legal representatives of the estate (see *Al Rashidy, supra* at p 376).

[16] This, however, leads us to the next important issue of whether the plaintiffs could be considered as beneficiaries in order to have the *locus standi* to commence legal proceedings. In this respect, the nature of the trust held by the late Mohamed Yaman calls for careful scrutiny. Was there in fact a sale of the lands in question by Jangkau binti Jangkar as seller to Mohamad Yaman as buyer as contended by the plaintiffs? If there was, then the plaintiffs as the children of Mohamed Yaman were indeed the beneficiaries and had the *locus standi* to commence legal proceedings. If, however, there was no such sale, and Mohamad Yaman was merely the trustee, it must follow that the plaintiffs could not have any interest in the land. Their interest in the land can only flow from their rights as beneficiaries to the estate of Mohamed Yaman.

[17] In this regard, the record on the title clearly reflected that Mohamed Yaman held the said lands as trustee (see appeal record, part C, vol 2(2) at pp. 293-294). As mentioned earlier, there was no evidence of sale between Jangkau binti Jangkar and Mohamed Yaman. The plaintiffs' contention that

in those times lands sold below one acre were usually held on trust is without merit as the record on the title showed many instances when lands less than one acre were transferred outright and not on trust. The trust document at p. 289 of the same appeal record established beyond doubt that the transfer to Mohamed Yaman was as trustee. The irresistible inference is that there was no such sale of the land as asserted by the plaintiffs. The assertion that the trust was for the benefit of the plaintiffs cannot be right as the plaintiffs were not born yet when the trust document was executed in 1950. In this context, it is noteworthy that the plaintiffs never claimed that they were the descendants of Jangkau binti Jangkar. It was the first defendant who claimed to be the grandchild of Jangkau binti Jangkar. It is therefore more likely that Mohamed Yaman was holding the said lands on trust for Jangkau binti Jangkar and her descendants. In the circumstances, the learned judge, with respect, was in error when he concluded that the consent of the beneficiaries of the estate of Mohamad Yaman was required before the land could be transferred to the first and second defendants.

[18] It must also follow that even if there was any fraud in the transfer of the lands, the property should revert to the estate of Jangkau binti Jangkar and not to the estate of Mohamed Yaman. Even if the trust was somehow imperfect, the property will still not revert to the estate of Mohamed Yaman. On this score, the Federal Court in *Lee Phek Choo v. Ang Guan Yau & Anor* [1975] 1 LNS 83; [1975] 2 MLJ 146 had to contend with the question of whether a trust had been created in respect of a property by a grandmother in favour of her grandchildren. In arriving at his decision, Lee Hun Hoe CJ (Borneo) observed (at p 147):

> In creating a trust, as laid down by Lord Langdale MR in *Knight v. Knight* [1840] 3 Beav. 148 at 173, there must exist the three certainties, that is, certainty of words, certainty of subject-matter and certainty of objects. *Snell's Principles of Equity*, 26th Edition, discusses about the effect of absence of any certainties at pages 126 to 127 as follows:
>
> > The paramount certainty is that of subject-matter in the first sense; if there is no certainty as to the property to be held on trust, the entire transaction is nugatory. Next, if that certainty is present but there is no certainty of words, the person entitled to the trust property holds free from any trust. Finally, if both these certainties are present but there is uncertainty of objects, there is a resulting trust for the settlor, for 'once establish(ed) that a trust (of definite property) was intended and the legatee cannot take beneficially, the same applies where there is uncertainty of the subject-matter as regards the beneficial interest, unless one of the beneficiaries can establish a claim to the whole.

[19] At any rate, we found the finding of fraud in relation to the 2006 order to be quite remarkable as apart from the order itself, no other documents in that action were produced before the trial court. It is settled law that one High Court cannot lightly set aside a final order regularly obtained from another High Court of concurrent jurisdiction. The one special exception to this rule is where the final judgment of the High Court can be proved to be null and void on the ground of illegality or lack of jurisdiction (*Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75). A judgment may also be impeached for deliberate fraud practised upon the court although it would be insufficient to show that a litigant merely convinced the court through misleading or erroneous evidence (*Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd* [2001] 2 CLJ 321 ("*Chee Pok Choy*")).

[20] In the instant case, it can hardly be said that deliberate fraud had been practised on the court. The learned judge hearing the case which resulted in the 2006 order would have granted the said order based on the information gathered from the affidavits filed. As those affidavits were not produced at the trial below, it becomes a matter of pure speculation as to how the first and second defendants had defrauded the court. It cannot be gainsaid that suspicions and surmises and conjecture are not permissible substitutes for established facts or inferences legitimately drawn from facts taken as a whole (*Satish Chandra v. Satish Kantha Roy* [1923] PC 73 as applied in *Chee Pok Choy*, *supra* at p. 336). We are constrained to hold that there was no material upon which the learned judge could make a finding of fraud such as to impeach a court order. The reasons given by the learned judge for doing so were more relevant for setting aside a court order. Without the need for any prescience or foresight, the plaintiffs could have been better off trying to set aside the 2006 order instead of commencing fresh proceedings to impeach the said order.

Conclusion

[21] In the circumstances, and for the reasons we have given, we were persuaded that the plaintiffs in the action below and the respondents here had no *locus standi* to commence the proceedings and obtain the orders granted by the High Court as they were not beneficiaries of the estate of Jangkau binti Jangkar. Being beneficiaries of the estate of Mohamed Yaman was of no consequence.

[22] We were therefore constrained to hold that the decision of the High Court in granting those orders was plainly wrong. Accordingly, we allowed both the appeals and set aside the orders of the High Court with costs here and below for both appeals set at RM15,000 subject to allocator fees. The deposits are to be returned to the appellants. Order accordingly.